

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

ALAN KRUSS,

Plaintiff and Appellant,

v.

JESS RAE BOOTH, et al.,

Defendants and Respondents.

G041738

(Super. Ct. No. 06CC00199)

ORDER MODIFYING OPINION; NO  
CHANGE IN JUDGMENT

The opinion filed June 11, 2010 is hereby modified in the following ways:

(1) On page 2 of the slip opinion, in the first full paragraph, insert the word “entirely” after the word “governed” in the last sentence, so that the phrase reads “governed entirely by Nevada law” instead of “governed by Nevada law.”

(2) On page 7 of the slip opinion, in the final paragraph (the one that begins with the words “The original complaint . . . .”) substitute the word “certain” for the word “the” seven lines down, so that the phrase reads “should apply to certain internal affairs of an out-of-state corporation” instead of “should apply to the internal affairs of an out-of-state corporation.”

(3) Likewise, on page 14 of the slip opinion, in the first sentence of the first full paragraph, substitute the word “certain” for the word “the” in the second line of the paragraph and eliminate the word “basic” in the first line, so that the phrase reads “the question of whether certain internal affairs of an out-of-state corporation” instead of “the basic question of whether the internal affairs of an out-of-state corporation.”

(4) On page 15 of the slip opinion, at the end of the last full paragraph (the one ending with the mention of *Medical Device Alliance v. Ahr* (2000) 116 Nev. 851), insert the following new footnote 16 and renumber correspondingly all subsequent footnotes:

16. We have, in this decision from a judgment after a demurrer was sustained without leave to amend, no occasion to explore the precise *scope* of section 2115, or determine, for example, whether there are nuanced differences between California and Nevada law concerning the fiduciary duties of corporate directors. For example, we need not consider in this opinion how sections 204 [which allows for articles of incorporation to put certain limits on director liability that might otherwise be imposed by section 309] or 310 [which allows, under certain conditions, contracts to escape from being void or voidable even though a corporate director may have a financial interest in them] fit into this case, if at all. (Neither section 204 or 310 is listed in section 2115, and neither have been mentioned in any of the briefing before us). These issues, if they ever do become relevant, can await another day.

Nor do we have any occasion to consider the more basic question of whether section 2115 would be upheld or applied by, say, the court of another state. (Cf. *VantagePoint Venture Partners 1996 v. Examen, Inc.* (Del. 2005) 871 A.2d 1108, 1114-1115.)

(5) On page 16 of the slip opinion, in the first sentence of the first indented paragraph on the page (the one that now begins with the words “There is an exception”), rewrite the sentence so that it now reads “There is, however, at least a partial exception to the operation of section 2116 to be found in section 2115 of the Corporations Code.” (The old sentence read: “There is an exception, however, found in section 2115 of the Corporations Code.”) The footnote at the end of the sentence should remain.

(6) On page 30, at the end of the first full paragraph (ending with the words “conflict of interest”), insert the following new footnote 36:

36. One of the dangers of winning on demurrer is that you are stuck, on appeal, with your opponent's version of the facts, and those facts can be highly critical of you indeed. (E.g., *Gruenberg v. Aetna Ins. Co.* (1973) 9 Cal.3d 566, 571 [Supreme Court accepted as true for purposes of review that defendants "joined together and acted in concert to falsely imply that the plaintiff had a motive to deliberately set fire to and burn down his place of business" to avoid an insurer from having to pay a fire claim].) We reiterate again that this case comes to us on demurrer, so the allegations of self-dealing set forth in the complaint must be accepted as true.

These modifications do not affect the judgment.

SILLS, P. J.

WE CONCUR:

MOORE, J.

FYBEL, J.